Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1847

BANGOR AND AROOSTOOK RAILROAD CO.
and CANADIAN PACIFIC LIMITED,
PETITIONERS,

v.

INTERSTATE COMMERCE COMMISSION, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF OF PETITIONERS

LAURENCE S. FORDHAM
VERNE W. VANCE, JR.
SCOTT C. MORIEARTY
TODD D. RAKOFF
FOLEY, HOAG & ELIOT
10 Post Office Square
Boston, Massachusetts 02109
Attorneys for Petitioner Bangor and Aroostook Railroad Company
LEE A. MONROE
SIDLEY & AUSTIN
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Attorneys for Petitioner Canadian Pacific Limited

Of Counsel:
WILLIAM M. HOUSTON
General Counsel
Bangor and Aroostook Railroad Company
Northern Maine Junction Park
R. R. 2
Bangor, Maine 04401
(207) 848-5711

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Reply may be necessary in order to put the Petition in proper focus with respect to the underlying conduct which is its subject.

With a few isolated exceptions, the speech in question is essentially harmless solicitation of routes via Canadian

Pacific. No amount of characterization of it can change that. Except in these instances, the Commission did not find it to be false or fraudulent or coercive or misleading or reckless. Nor except in these instances are there findings that a single shipper was misled by it or that it was calculated to mislead. Indeed, the content of the speech was not the basis of the Commission's decision.

Since the briefs in opposition endeavor to portray the solicitation as pervasively misleading and reckless, petitioners respectfully refer the Court for its convenience to the only two pages of the Commission's decision that make such findings (Petition, Appendix A-65, 66).

The briefs in opposition substantially are addressed to the merits, and ask this Court to characterize the solicitation as the Commission did not.

They do not belie the importance or worthiness of consideration by this Court of two principal questions presented—

> whether the solicitation is within the reach of Section 3(4),

and

> if so, whether Section 3(4) so interpreted infringes rights protected by the First Amendment.

Whether these and related questions are important and worthy of this Court's consideration with reference to essentially bland preferential solicitation by an originating carrier is what is before the Court at this time.

Conclusion

For the reasons set forth herein and in the Petition, a writ of certiorari to review the decision of the Court of Appeals for the First Circuit should issue.

August 24, 1978

Respectfully submitted,

LAURENCE S. FORDHAM
VERNE W. VANCE, JR.
SCOTT C. MORIEARTY
TODD D. RAKOFF
FOLEY, HOAG & ELIOT
10 Post Office Square
Boston, Massachusetts 02109
Attorneys for Petitioner Bangor and Aroostook Railroad Company

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SIDLEY & AUSTIN
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